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Written statement* submitted by the Jubilee Campaign, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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States' Domestic and Extraterritorial Economic, Social and Cultural Rights Obligations

Recent developments within the Human Rights Council and Universal Periodic Review (UPR) have emphasized the relevance of respecting, protecting and fulfilling economic, social and cultural rights (ESCRs). The Habitat International Coalition (HIC) encourages the Members of United Nations (UN) Human Rights (the Council) to develop the UN human right policy agenda further to align with global discourse to ensure that ESCRs assume the necessary level of priority with other rights, operationalizing the indivisibility and independence of rights in its deliberations. We are encouraged by the High Commissioner's focus in his present report annual report on all of "integrating human rights in development and the economic sphere"; "protection of human rights in situations of conflict, violence and insecurity"; and "combating impunity and strengthening accountability and the rule of law."[1]

The UPR process reflects a particular need to develop the line of inquiry to ensure greater integrity of the bundle of rights under review. Especially in the second UPR round, stakeholder inputs have provided ample information on the ESCR issues, particularly in countries whose populations suffer the effects of austerity measures, popular uprisings, antisocial trade and investment patterns, corporate capture of the state and policies corresponding with the so-called Washington Consensus,as well as conflict, violence and insecurity.[2] However, the corresponding human rights issues are not reflected outcomes.

This consistent omission suggests greater rigor needed in State's implementation of all three dimensions of duty in the UPR process:

1. The duty of the state under UPR review to cooperate in its review;

2. Other states' duty to review implementation of previous reviews, identify and take lessons from good practice, and to make further recommendations to ensure the universal respect, protection and fulfilment of human rights;

3. All states duty to respect, protect and support fulfilment of human rights in their international relations, including to regulate non-state actors accordingly. Under peremptory norms of international law, all Atates also bear an obligation not to recognize, cooperate with or support an illegal situation of gross HR violations, and to take "effective measures" toward remedy.[3]

The Council has been reminded of States' extraterritorial duties and obligations in numerous cases, although the Council's explicit recognition of, and action on corresponding obligations are rare. In its report presented to the Council's 22nd session on 18 March 2013, the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (OPT) echoed "the law on State responsibility for internationally wrongful acts, including third-State responsibility" in the violations comprising the crime of population transfer, including the implantation of settlers and settlements.[4]

Common Article 1 of the Geneva Conventions obliges the High Contracting Parties (HCPs) to ensure respect for the Conventions provisions, but HCPs have yet to implement this obligation. This obligation is not merely reinforcing States' general obligation to respect the norms, but entails a duty on States to take all possible steps to ensure that the rules enshrined are respected by all and in particular, by the parties to conflict.[5] HCPs' failure to fulfil their corresponding duties[6] has eroding faith in the Convention by neglecting the corrective provisions available to them. This inertia effectively facilitates the maintenance of settler colonies, and erodes global confidence in international law, leaving no surprise—or shortage—in resistance movements, including the most virulent kind.

The International Law Commission Draft Articles on State Responsibility, reflecting customary international law, state in Article 41 that, in case of breaches of peremptory norms of international law, all States are under obligation not to recognise the situation resulting from the illegal conduct as lawful, not to render aid or assistance in maintaining it and actively to cooperate to bring it to an end.

These remedial measures constitute "self-executing obligations"; i.e., not requiring further resolution or legislation. Nonetheless, the recent Security Council resolutions, specifying some of the measures required *erga omnes* to correct an illegal situation is welcome, if only selective in nature, case and scope.[7]

The call to execute extraterritorial ESCR obligations and remedy gross human rights violations and international crime is not new. UNSC resolution 465 (1980) advised "all States not to provide Israel with any assistance to be used specifically in connexion [sic] with settlements in the occupied territories."[8] The International Court of Justice recalled the same obligations with reference to Israel's construction of the Wall in the OPT. In its relevant Advisory Opinion, the ICJ stated that "[g]iven the character and the importance of the rights and obligations involved [...], [i]t is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."[9] The Court reiterated that "[a]ll States are under an obligation not to recognise the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction."[10]

Yet, despite the detailed accounts of the pivotal role of Israel's parastatal institutions, including the World Zionist Organization,[11] in the conduct of population transfer, at least 50 States—at least 18 Council Members[12]— host these institutions, extending tax-exempt charity status, while they mobilise financial and human capital within their sovereign territories for the benefit of the illegal settler-colonial enterprise.

In addition, bilateral trade of States and their domestic entities with and settler colonies further bolsters their economy and contributes to their permanence and growth, while, at the same time, increasingly undermining Palestinian ESCR and living conditions. By allowing settlement produce to enter their internal markets, third-party States enable an illegal a situation arising from a breach of peremptory norms of international law and thus violate their nonrecognition duties.

The recent controversy over the Swiss organisation Crans-Montana Forum organising a global event in occupied Western Sahara has raised, once again, the need for Council integrity in addressing gross violations of ESCR and peremptory norms of international law, including the denial of self-determination of the Sahrawi people. On 31 January 2015, the African Union strongly condemned the Crans-Montana plan to hold its forum in Dakhla, occupied Western Sahara, as "a grave violation of the International Law."[13]

This violation of international law by the Swiss entity and the corresponding omission of the territorial State in which the organisation operates—the depositary of the Geneva Conventions—shed new light on the need for the Council to address the bundle of human rights violations, in particular ESCR, arising from the foreign occupation of Western Sahara, in particular the exploitation of the country's natural resources at the expense of Sahrawi people's ESCRs and inalienable right to self-determination.

This particular event in the breach of peremptory norms invokes the 40th anniversary of the ICJ's 1975 Advisory Opinion, whereby the Court ruled out support for Morocco's claim to territorial or legal sovereignty over Western Sahara."[14] In 2002, the UN Under-Secretary General for Legal Affairs advised the Security Council on the illegality of the occupier or complicit third party exploiting natural resources in Western Sahara.[15] Nonetheless, the occupying State maintains a 2,400 km-long dividing wall through the country, and exports Western Sahara's mineral, fossil, agricultural and marine endowment, implanting settlers and collaborating with complicit firms and their home States.

In its recommendation to Third States, the 2013 Fact-Finding Mission on Israeli settler colonies called upon "all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognise an unlawful situation resulting from Israel's violations."[16] However, that recommendation appears inoperative. While this submission primarily cites States' omission in two egregious cases, the Council's urgent attention to the body of States' extraterritorial ESCR obligations due, but also would go far to restore faith in the integrity of international law norms.

We encourage the Council's Member States consider the analogous violations of ESCRs in the occupied territories of Palestine and Western Sahara, and third State's complicity in them. Implementing State's extraterritorial ESCR obligations would go far toward "integrating human rights in development and the

economic sphere"; "protection of human rights in situations of conflict, violence and insecurity"; and "combating impunity and strengthening accountability and the rule of law."

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[1] "Annual report of the United Nations High Commissioner for Human Rights," A/HRC/28/3, 19 December 2014, pp. 12, 16 and 10, respectively, at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_3_ENG.doc.

[2] See stakeholder submissions on the second UPR round on Egypt, Italy, Spain and Turkey, for example, as compared " Report of the Working Group on the Universal Periodic Review - Egypt," A/HRC/28/16, at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_16_ENG.doc; "Report of the Working Group on the Universal Periodic Review – Italy," A/HRC/28/4, at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_4_en.doc; "Advance Questions to Spain," at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session21/ES/Advanced_questions_Spain.docx; and "Advance Questions to Turkey," at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session21/TR/Advanced_questions_Turkey.docx.

[3] "Human rights situation in Palestine and other occupied Arab territories Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem," A/HRC/22/63, 7 February 2013, paras. 17, 104, at:
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf; Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights, 2011, at: http://www.etoconsortium.org/en/library/maastricht-principles/; "
"Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory," Advisory Opinion of 9 July 2004 [heretofore: ICJ Advisory Opinion], at: http://www.icj-cij.org/docket/files/131/1671.pdf; International Committee of the Red Cross, *Business and international humanitarian law* (Geneva: 2006), p. 14, at:
http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf; General Assembly resolution "The situation in the Middle East," A/37/123, 16 December 1982, para. 13, at: http://unispal.un.org/unispal.nsf/a06f2943c226015c85256c40005d359c/faabb796990cf95a852560d9005240cf?OpenDocument; Security Council Resolution S/RES/465, 2203rd meeting, 1 March 1980, para. 7, at: http://unispal.un.org/unispal.nsf/d744b47860e5c97e85256c40005d01d6/5aa254a1c8f8b1cb852560e50075d7d5?OpenDocument; International Convention on the Suppression and Punishment of the Crime of Apartheid, General Assembly resolution 3068 (XXVIII), 30 November 1973, Articles II and III, at: https://treaties.un.org/doc/Publication/UNTS/Volume%201015/volume-1015-I-14861-English.pdf.

[4] "Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem," A/HRC/22/63, 7 February 2013, para. 17, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf.

[5] L. Boisson and L. Condorelli, "Common Article 1 of the Geneva Conventions Revisited: Protesting Collective Interests" International Review of the Red Cross, 837 (2000). According to the authors, while there were views that Article 1 was not drafted with the intention of imposing obligations on States that were not also derived from the other provisions of the Geneva Conventions, a more careful examination of the travaux préparatoires reveals that the

negotiators clearly had in mind the need for the parties to the Conventions to do everything they could to ensure universal compliance with the humanitarian principles underlying the Conventions.

[6] Besides the obligations under Common Article 1 to the Geneva Conventions, the High Contracting Parties have additional obligations under Article 146 of the Fourth Geneva Convention, which is the cornerstone of the system utilised for the repression of serious violations of the Convention (grave breaches). Given the seriousness of these violations, which are affecting the international community as a whole, the High Contracting Parties to the Conventions are under an obligation to enact any legislation necessary to provide effective penal sanctions, to search for and prosecute individuals alleged to have committed, or to have ordered to be committed, these crimes, in accordance with the principle of universal jurisdiction. Grave breaches of the Fourth Geneva Convention are listed in Article 147, which includes in this category also the unlawful deportation or transfer of protected persons.[7] Security Council resolutions S/RES/2170 (15 August 2014); S/RES/2199 (12 February 2015).

[8] Security Council Resolution S/RES/465, 2203rd meeting, 1 March 1980, para. 7.

[9] Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion) ICJ Rep 2004, para. 159

[10] Ibid.

[11] A/HRC/22/63, (n 1), pp. 6, 28, 21, 32

[12] Argentina, Austria, Brazil, Chile, Costa Rica, Czech Republic, Ecuador, Germany, Guatemala, India, Italy, Peru, Poland, Romania, Spain, Switzerland, United States of America and Venezuela (Bolivarian Republic of), cited in http://www.jnf.org/map.html, www.jnf.org and www.kklamericalatina.org, www.wzo.org, http://www.jnf.org/about-jnf/in-your-area/, http://www.wzo.org.il/Zionist-Federations, http://www.jafi.org/JewishAgency/English/Aliyah/Contact+Addresses/Representatives/Europe.htm, and http://www.jafi.org.il/JewishAgency/English/Contact+Us/International+Offices/.

[13] "Declaration on the Organization of Crans Montana Forum in the Occupied City of Dakhla, Western Sahara," Assembly of the Union, 31 January 2015, at: http://www.spsrasd.info/en/content/au-call's-boycott-next-edition-crans-montana-forum-scheduled-occupied-city-dakhla-declaration; also "AU Condemns Forum in Occupied Western Sahara," *HIC-MENA News* (1 February 2015), at:

[14] "...the Court does not support Morocco's claim to have exercised territorial sovereignty over Western Sahara." International Court of Justice, *Western Sahara Advisory Opinion of 16 October 1975*, para. 105, at: http://www.icj-cij.org/docket/files/61/6197.pdf. The Court also cited "the paucity of evidence of actual display of authority unambiguously relating to Western Sahara renders it difficult to consider the Moroccan claim"; that "Morocco cannot, for the most part, be considered as disposing of the [legal] difficulties in the way of its claim to have exercised effectively internal sovereignty over Western Sahara," para. 103; finally, noting that, "even taking account of the specific structure of the Sherifian State [Morocco], [evidence] does not establish any tie of territorial sovereignty between Western Sahara and that State," paras. 107, 162. "Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory," para. 162.

[15] Hans Corell, "Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council," S/2002/161, 12 February 2002.

[16] A/HRC/22/63, (n. 1), para. 116.